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<b>YOLANDA C. BURROWS, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 04-650</b>
	)	<b>Issued: January 4, 2006</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Farmington Hills, MI, Employer</b>	)	
	)	

Oral Argument October 4, 2005

*Jim C. Gordon, Jr., Esq.*, for the Director

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

On January 12, 2004 appellant filed a timely appeal of nonmerit decisions of the Office of Workers' Compensation Programs dated February 6, April 29, August 4 and October 24, 2003. As the Office's most recent decision on the merits of appellant's case was issued on October 22, 2002, more than one year prior to the filing of this appeal, the Board does not have jurisdiction to review the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.<sup>1</sup>

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim.

<sup>1</sup> These sections of the Board's *Rules of Procedure* require that an appeal be filed within one year of the date of issuance of the decision being appealed.

### **FACTUAL HISTORY**

On December 12, 2000 appellant, then a 35-year-old carrier, filed a claim for compensation for a traumatic injury sustained on December 11, 2000 when her lead supervisor, Jan Webber, verbally attacked her and harassed her in retaliation for filing complaints against her. She claimed that she was disabled due to mental stress. Appellant amplified that on December 11, 2000 at about 9:30 a.m. Ms. Webber hollered at the carriers demanding that they shut up, that at about 10:00 a.m. Frederick Daniels informed her that she was scheduled for vacation starting December 18, 2000, that she was puzzled and asked for a copy of her request for leave (Form 3971), that she pointed out to Mr. Daniels that this application requested December 18 to 24, 1999 rather than 2000, that he adjusted her schedule accordingly and that a couple of minutes later Ms. Webber accused her of playing games and scheduled a meeting with a union representative. Appellant stated that she felt harassed and began "to shake and tremble to the point of being disabled," that Ms. Webber approved her request to go home and that Ms. Webber had harassed her for the past two years.

In a December 15, 2000 statement, Ms. Webber stated that on December 11, 2000 the carriers were being loud and disruptive and that she instructed them to quiet down, speaking loudly but not telling them to shut up. She continued that Mr. Daniels asked her for a copy of appellant's leave request, that she gave him the copy and informed him that appellant would be required to take her annual leave for December 18, 2000 since she did not cancel it 15 days in advance and that Mr. Daniels returned and said that appellant stated that the leave application was for 1999 rather than 2000. Ms. Webber noted that December 18, 1999 was a Saturday, which could not be the start of a leave week and that, if the leave request was for 1999, the period requested began before the request. She stated that she informed appellant of this and interviewed Mr. Daniels, who stated that he did not adjust appellant's schedule and that she made her take the leave on December 18, 2000 because she had not cancelled it. In a January 10, 2001 interview, Mr. Daniels stated that he revised appellant's schedule because he saw that the leave request was defective and she did not want to take the leave.

The leave request in question is dated December 21, 1999 and requests annual leave from December 18 to 24, 1999. It was approved by a supervisor on December 23, 1999. A January 12, 2001 Step B decision on appellant's grievance found that management did not deny appellant the right to cancel her annual leave for the week beginning December 18, 2000, as the leave request contained an error as to the year the leave was requested but it was clear that appellant and management were aware that the annual leave was to be served December 18 through 24, 2000.

By decision dated June 14, 2001, the Office found that appellant had not established that she sustained an emotional condition in the performance of duty. Appellant requested a hearing, which was held on June 18, 2001. She testified that her claim was only for the December 11, 2000 incident and that the leave request slip in dispute was given to her for 2000 but she used it on December 21, 1999 for December 18 to 24, 1999 since she was off work and wanted money for the holiday, which she got. She contended that the employing establishment could have denied the leave request but since it did not, it was a legally binding contract. By decision dated March 20, 2002, an Office hearing representative found that the December 11, 2000 incident

involved administrative functions of the employer and that there was no evidence of error or abuse by the employing establishment and no evidence of yelling by Ms. Webber.

By letter dated March 26, 2002, appellant requested reconsideration, contending that she was denied equal protection of the law and reiterating her contentions about the leave request. By decision dated May 14, 2002, the Office found that appellant's request for reconsideration was repetitious, cumulative and irrelevant and not sufficient to warrant review of its prior decisions. By letter dated May 14, 2002, appellant requested reconsideration, stating that annual leave was deducted for December 18 to 24, 1999 and that she was forced to take vacation time in December 2000. By decision dated July 31, 2002, the Office found that appellant's request for reconsideration was repetitious and cumulative and not sufficient to warrant review of its prior decisions.

By letter dated August 5, 2002, appellant requested reconsideration, contending that Ms. Webber's actions regarding the leave request were erroneous and abusive, that Ms. Webber also verbally assaulted her on the workroom floor on December 11, 2000 that the Step B decision on the leave request was incorrect and that she did not cancel the leave for December 18, 2000 14 days in advance because she did not know about it until December 11, 2000. By decision dated October 22, 2002, the Office denied modification of its prior decisions, finding no error or abuse by the employing establishment and no evidence of harassment. By letter dated October 28, 2002, appellant requested reconsideration, reiterating the arguments in her August 5, 2002 request for reconsideration. By decision dated November 4, 2002, the Office found that appellant's request repetitious and insufficient to warrant review of its prior decisions.

By letter dated November 7, 2002, appellant requested reconsideration, reviewing the statements made when she filed her claim and contending that, whether Ms. Webber told the carriers to shut up or quiet down, she did so in a hostile, unprofessional and abusive manner. Appellant also contended that Ms. Webber attempted to intimidate her into accepting leave for December 18, 2000 and that Ms. Webber's statement that Mr. Frederick had not adjusted her schedule was contrary to his statement and incorrect. By decision dated February 6, 2003, the Office refused to reopen appellant's case for further review of the merits of her claim on the basis that she had not presented new evidence or legal arguments.

By letter dated February 20, 2003, appellant requested reconsideration, contending that eyewitnesses were not needed to establish that she sustained an injury and that the Office failed to consider her medical evidence and failed to sufficiently develop the factual evidence. By decision dated April 29, 2003, the Office found appellant's request for reconsideration repetitious and insufficient to warrant review of its prior decisions. By letter dated July 3, 2003, appellant requested reconsideration, contending that Ms. Webber failed to supply pertinent information to contradict the claim and that the Office had ignored her claim of being verbally assaulted and harassed by Ms. Webber. By decision dated August 4, 2003, the Office found that appellant's arguments were irrelevant and not sufficient to warrant review of its prior decisions. By letter dated August 19, 2003, appellant requested reconsideration, contending that the Office should have interviewed witnesses, that the National Institute for Occupational Safety and Health defined workplace violence to include verbal abuse, that Ms. Webber's use of coercive behavior in an effort to force her to take leave on December 18, 2000 constituted an assault and that the

Step B decision on her leave request was racially motivated. By decision dated October 24, 2003, the Office found that appellant's request for reconsideration presented no relevant new arguments and was insufficient to warrant review of its prior decisions.

### **LEGAL PRECEDENT**

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

### **ANALYSIS**

The Office's most recent decision on the merits of appellant's case was issued on October 22, 2002. As noted above, the Board does not have jurisdiction to review this decision or the merits of appellant's case. It only has jurisdiction to review the Office's nonmerit decisions issued on February 6, April 29, August 4 and October 24, 2003, which were issued in response to appellant's requests for reconsideration dated November 7, 2002 and February 6, April 29, August 4 and October 24, 2003.

None of these requests for reconsideration was accompanied by new evidence not previously considered by the Office. The arguments raised by appellant in these requests for reconsideration were not relevant and new and did not show that the Office erroneously applied or interpreted a specific point of law. Appellant's argument is that Ms. Webber's admonition to the carriers on December 11, 2000 to quiet down (or to shut up, if that were established) constituted abuse. This contention was previously considered by the Office. The Board has held that the mere fact a supervisor may raise his or her voice during the course of a conversation does not warrant a finding of verbal abuse.<sup>2</sup> Appellant has not established that the Office erroneously applied or interpreted a point of law.

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<sup>2</sup> *Joe M. Hagewood*, 56 ECAB \_\_\_\_ (Docket No. 04-1920, issued April 26, 2005).

Appellant, in her November 7, 2002 request for reconsideration, pointed out an error in Ms. Webber's statement that Mr. Daniels had not adjusted appellant's schedule upon being shown her leave request form. Mr. Daniels stated that he had done so. However, this is not the kind of error that can afford coverage under the Act, as error or abuse must be shown in the employing establishment's administration of personnel matters.<sup>3</sup> Appellant has repeatedly argued, both before and after the Office's last merit decision, that the employing establishment's action on her leave request was erroneous and abusive. However, the decision on her grievance was that management's action on the leave request was not erroneous and appellant's arguments do not show that this decision was in error.

Appellant's argument that the Office should have considered the medical evidence is not relevant, nor does it show that the Office erroneously applied or interpreted a specific point of law. When no compensable factors of employment are established, the Office need not consider the medical evidence of record.<sup>4</sup> While appellant is correct that eyewitnesses are not needed to establish that an injury was sustained,<sup>5</sup> it is unclear what the testimony of eyewitnesses would have added, as the essential facts of the case are not in dispute. Her argument that the Office did not adequately develop the claim does not point to specific evidence that was needed but not obtained to adjudicate her case properly. It is appellant's burden to prove the elements of her claim.<sup>6</sup> Her argument that the Step B decision on her leave request was racially motivated has no color of validity and finds no support in the record.<sup>7</sup>

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

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<sup>3</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>4</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>5</sup> *Christine S. Hebert*, 49 ECAB 616 (1998).

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *See Charles A. Jackson*, 53 ECAB 671 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 24, August 4, April 29 and February 6, 2003 are affirmed.

Issued: January 4, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board